

## REMARKS

### I. Introduction

Claims 18 and 27-75 are currently pending in the present application. Claims 18, 27, 52, and 61-62 are independent. Claims 27-60 and 62-75 are subject to a Restriction Requirement imposed by the Examiner and have accordingly been withdrawn from consideration by the Examiner pursuant to an Election by Original Presentation. All claims remaining for consideration stand rejected. In particular:

(A) claims 18 stands rejected under 35 U.S.C. §112, second paragraph, for allegedly being indefinite; and

(B) claims 18 and 61 stand rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over U.S. Patent No. 6,720,990 (hereinafter “Walker”).

Upon entry of this amendment, which is respectfully requested, claims 27-60 and 62-75 will be cancelled without prejudice or disclaimer, in response to the restriction requirement.

Applicants hereby respectfully request reexamination and reconsideration of the pending claims in light of the amendments and remarks provided herein and in accordance with 37 C.F.R. §1.112.

### II. The Examiner’s Rejections

#### A. 35 U.S.C. §112, second paragraph

Claim 18 stands rejected under 35 U.S.C. §112, second paragraph, for allegedly being indefinite. More specifically, the Examiner states that the term “substantially”, recited by claim 18, is a relative term that renders claims 18 indefinite. Applicants traverse this ground for rejection as follows.

Applicants respectfully note that it should be quite clear from Applicants’ disclosure as filed that “an area in which human activity is desired to be substantially nonexistent” is descriptive of an area in which humans are not usually supposed to be (e.g., perimeters of nuclear power facilities or near or in the water of a public water supply). While members of the public are not supposed to be in such places, for example, there may occasionally be authorized personal in such areas. There is no evidence on the

record that such a simple concept would fail to apprise one of ordinary skill in the art of the scope of the claimed embodiment.

Applicants respectfully reiterate (from Applicants' previous responses) that **the Examiner's ability to articulate clearly what the Examiner believes the scope of the claimed term to be is the epitome of definiteness**. In this case, the Examiner was able to determine what the claim term meant with enough specificity to select and apply multiple references which the Examiner believes anticipate portions of the claimed limitations, including the term in question. That the Examiner might prefer a term that the Examiner deems more precise is not adequate grounds for rejection. See, MPEP §2173.02 ("Some latitude in the manner of expression and the aptness of terms should be permitted even though the claim language is not as precise as the examiner might desire.").

At least for these reasons, the Examiner has simply and entirely failed to establish a *prima facie* case for indefiniteness, and the §112, second paragraph ground for rejection of claim **18** should therefore be **withdrawn**.

**B. 35 U.S.C. §103(a) - Dubats, Matsumoto, Abrams**

Claims **18** and **61** stand rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Dubats in view of Matsumoto, in further view of Abrams. Applicants traverse this ground for rejection as follows.

**1. No *Prima Facie* Case of Obviousness**

The Examiner has failed to show how every element of the claims is taught or suggested by the cited references and the Examiner has entirely failed to address or consider (much less resolve) any of the requisite factual inquiries as set forth in *Graham v. John Deere*. The Examiner has further failed to set forth a valid reason that would have led one of ordinary skill in the art to combine the cited references as suggested by the Examiner. At least for these reasons, as described in more detail hereinafter, the Examiner has failed to establish a *prima facie* case for obviousness.

a) **The reference fails to teach or suggest:** *requesting that each remote viewer of the plurality of remote viewers provide an indication of whether the image of the object matches a reference image of a particular object (claim 61)*

Applicants respectfully assert that none of Dubats, Matsumoto, nor Abrams, alone or in combination, teaches or suggests limitations of claim 61. For example, Dubats, Matsumoto, and Abrams fail to teach or suggest *requesting that each remote viewer of the plurality of remote viewers provide an indication of whether the image of the object matches a reference image of a particular object*.

The Examiner states that neither Dubats nor Matsumoto teach or suggest the above-quoted limitation. Office Action, pg. 7, lines 8-11. Applicants agree. The Examiner goes on, however, to rely upon Abrams to make up for this deficiency of Dubats and Matsumoto. Specifically, the Examiner states that “[i]t is inherent [in Abrams] that a user who provides surveillance would respond if the situation dictates.” *Id.*, at pg. 8, lines 16-17.

Initially, Applicants respectfully note that even if the Examiner’s allegation of inherency were taken as true (which Applicants do not believe it is), it is entirely inapplicable to Abrams. Abrams is not a reference that is descriptive of a system for surveillance. Instead, Abrams describes a “telepresence” system that is used for remote video conferencing. Nowhere does Abrams describe users providing surveillance services. It is entirely unclear, therefore, why Abrams would request remote viewers to match images to reference images – for any purpose.

Second, even if Abrams was a surveillance reference (which Applicants maintain is not the case), and even if the Examiner’s allegation of inherency were true (which Applicants also maintain is not the case), the “inherent” teaching would not read on the above-quoted limitation. Even if users providing surveillance services could be expected to “respond” if needed, this is simply not descriptive of requesting that the users match images to reference images. Simply nowhere does Abrams describe such a feature.

Further, even if the alleged inherent teaching of Abrams was applicable to the above-quoted limitation, the allegation of inherency itself is flawed. Applicants note that while “express, implicit, and inherent disclosures of a prior art reference may be relied

upon in the rejection of claims under 35 U.S.C. [sic] 102 or 103” (MPEP §2112), “[t]he fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic.” *Id.* at IV; *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993); *In re Oelrich*, 666 F.2d 578, 581-82, 212 USPQ 323, 326 (CCPA 1981). “In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.” *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original); MPEP §2112, at IV.

In this case, where no surveillance system is described at all by Abrams, and at best a teleconferencing system is described, it does **not necessarily** flow that users would be expected to “respond” to surveillance situations as they occur (e.g., at least because Abrams does not contemplate them occurring).

Accordingly, at least because Dubats, Matsumoto, and Abrams fail to teach or suggest *requesting that each remote viewer of the plurality of remote viewers provide an indication of whether the image of the object matches a reference image of a particular object*, Dubats, Matsumoto, and Abrams fail to render obvious claim 61.

Applicants therefore respectfully request that this §103(a) ground for rejection of claim 61 be **withdrawn**.

**b) The reference fails to teach or suggest: *receiving, from each remote viewer of the plurality of remote viewers, the indication of whether the image of the object matches the reference image of the particular object* (claim 61)**

Applicants respectfully assert that none of Dubats, Matsumoto, nor Abrams, alone or in combination, teaches or suggests limitations of claim 61. For example, Dubats, Matsumoto, and Abrams fail to teach or suggest *receiving, from each remote viewer of the plurality of remote viewers, the indication of whether the image of the object matches the reference image of the particular object*.

The Examiner relies upon Dubats to show a teaching of the above-quoted limitation. The Examiner equates the above-quoted limitation to the portion of Dubats that describes a “confidence level”. Office Action, pg. 9, lines 5-7. The “confidence level” of Dubats is descriptive of a computer program providing a level of probability that a computer result descriptive of an intruding object is accurate or not. Dubats, Col. 9, lines 26-46.

In other words, the Examiner equates a plurality of remote viewers (which are humans, as described in Applicants’ specification) matching images to reference images, with a computer program that analyzes “energy projections” to “estimate[] approximate size, speed and direction characteristics of intruding object(s).” Dubats, Abstract. Applicants respectfully submit that these two concepts are simply **not even similar, much less equivalent**. The only similarity is that both concepts are related to surveillance. Each, however, is descriptive of an entirely different method of identifying security threats. Dubats does not even contemplate the necessity of any humans in detecting intrusion events, for example, because Dubats is directed to an entirely automated system utilizing “energy projections” to identify intrusions. The above-quoted limitation is instead descriptive of a plurality of remote viewers matching images to reference images. Dubats simply does not contemplate such a feature.

Nor do either of Matsumoto or Abrams make up for this deficiency of Dubats.

Accordingly, at least because Dubats, Matsumoto, and Abrams fail to teach or suggest *receiving, from each remote viewer of the plurality of remote viewers, the indication of whether the image of the object matches the reference image of the particular object*, Dubats, Matsumoto, and Abrams fail to render obvious claim 61.

Applicants therefore respectfully request that this §103(a) ground for rejection of claim 61 be **withdrawn**.

- c) **The reference fails to teach or suggest:** *receiving a response to the image by the first user, in which the response is one of: an indication that a human is present in the image, an*

*indication that no human is present in the image, and an indication of uncertainty whether a human is present in the image (claim 18)*

Applicants respectfully assert that none of Dubats, Matsumoto, nor Abrams, alone or in combination, teaches or suggests limitations of claim 18. For example, Dubats, Matsumoto, and Abrams fail to teach or suggest *receiving a response to the image by the first user, in which the response is one of: an indication that a human is present in the image, an indication that no human is present in the image, and an indication of uncertainty whether a human is present in the image.*

The Examiner states that Dubats fails to teach or suggest the above-quoted limitation. Office Action, pg. 6, lines 6-9. Applicants agree. The Examiner goes on, however, to rely upon Matsumoto to make up for this deficiency of Dubats. Specifically, the Examiner alleges that Matsumoto describes receiving viewer responses comprising answers such as “yes”, “no”, and “maybe”.

Applicants do not disagree that Matsumoto describes receiving responses from cable TV viewers where the responses comprise short answers such as “yes”, “no”, and “maybe”. This functionality of Matsumoto, however, simply does not read on the above-quoted limitation.

Matsumoto is entirely devoid of mention or reference to any sort of surveillance applications. While Dubats at least describes a surveillance system, although devoid of any teaching or suggestion of having people provide responses regarding whether humans are present in images, Matsumoto fails both to describe surveillance applications as well as asking people whether humans are present in images. Thus, while Matsumoto could indeed be used as evidence that the above-quoted limitation is enabled because Matsumoto shows one method via which responses from people may be received, there is simply no description in Matsumoto that reads on the above-quoted limitation.

Accordingly, at least because Dubats, Matsumoto, and Abrams fail to teach or suggest *receiving a response to the image by the first user, in which the response is one of: an indication that a human is present in the image, an indication that no human is present in the image, and an indication of uncertainty whether a human is present in the image*, Dubats, Matsumoto, and Abrams fail to render obvious claim 18.

Applicants therefore respectfully request that this §103(a) ground for rejection of claim **18** be **withdrawn**.

**d) The reference fails to teach or suggest: *receiving responses to the image by the additional users* (claim 18)**

Applicants respectfully assert that none of Dubats, Matsumoto, nor Abrams, alone or in combination, teaches or suggests limitations of claim **18**. For example, Dubats, Matsumoto, and Abrams fail to teach or suggest *receiving responses to the image by the additional users*.

The Examiner relies upon Abrams to allegedly show a teaching of the above-quoted limitation. Specifically, the Examiner states that “[i]t is inherent [in Abrams] that a user who provides surveillance would respond if the situation dictates.” Office Action, pg. 7, lines 9-11.

As described in Section II.B.1.a herein, Abrams is not at all directed to security or surveillance applications. Nor does Abrams describe receiving responses related to images or remote locations. Thus, it simply does not necessarily flow that the viewers in Abrams would provide responses and it is therefore not an inherent teaching of Abrams.

Accordingly, at least because Dubats, Matsumoto, and Abrams fail to teach or suggest *receiving responses to the image by the additional users*, Dubats, Matsumoto, and Abrams fail to render obvious claim **18**.

Applicants therefore respectfully request that this §103(a) ground for rejection of claim **18** be **withdrawn**.

**e) The reference fails to teach or suggest: *evaluating the received responses* (claim 18)**

Applicants respectfully assert that none of Dubats, Matsumoto, nor Abrams, alone or in combination, teaches or suggests limitations of claim **18**. For example, Dubats, Matsumoto, and Abrams fail to teach or suggest *evaluating the received responses*.

The Examiner relies upon Dubats to allegedly provide a teaching of the above-quoted limitation. Specifically, the Examiner equates the above-quoted limitation with the “expert system” of Dubats. Office Action, pg. 7, lines 19-20.

The Examiner, however, grossly misinterprets the above-quoted limitation and/or the cited reference. Claim 18 recites, for example, receiving indications, from a plurality of users (*e.g.*, humans) regarding whether a human is present in an image. Dubats describes a computer analyzing “energy projections” at a remote site to estimate the size, speed, etc. of intruding objects. These are simply two entirely different ways of detecting security breaches. Dubats does not utilize humans at all to detect breaches (much less a plurality of humans), and instead teaches an entirely automated “expert system” (presumably to reduce the amount of manpower needed to effect a security solution).

Neither Matsumoto nor Abrams makes up for this deficiency of Dubats.

Accordingly, at least because Dubats, Matsumoto, and Abrams fail to teach or suggest *evaluating the received responses*, Dubats, Matsumoto, and Abrams fail to render obvious claim 18.

Applicants therefore respectfully request that this §103(a) ground for rejection of claim 18 be **withdrawn**.

#### **f) No Reason to Combine is Evident**

Even if the cited references taught or suggested each limitation of claims 18 and 61 (which Applicants maintain is not the case), the Examiner has failed to establish a *prima facie* case for obviousness for either of claims 18 and 61, at least because the Examiner has provided no valid argument, much less evidence (much less substantial evidence) that there would have been some reason for someone of ordinary skill in the art to combine the cited references to read on the pending claims.

The only reasoning that the Examiner provides for combining the references is that it would have been obvious to combine the references “[f]or the purpose of avoiding the high error cost of a single user by using redundant users.” Office Action, pg. 7, lines 15-16 and pg. 9, lines 1-2. Applicants respectfully note that none of the cited references describes utilizing a *single* user to detect security breaches (much less by comparing



images to reference images, etc.). It is therefore entirely unclear how one of ordinary skill could have possibly been motivated or otherwise have been caused to (a) modify the references to utilize a user (instead of a computerized system like in Dubats), to detect breaches in security, or (b) then feel that one user would cause too many errors, and accordingly believe that paying more users would be more beneficial to reduce errors. Neither of these premises is supported by any evidence of record. Nor do either of these premises appear valid or reasonable.

Accordingly, at least because the Examiner has (i) failed to show how every limitation of claims **18** and **61** is taught or suggested, (ii) failed to provide a proper reason to combine the cited references, and (iii) failed to support any reason to combine by evidence on the record, the Examiner has failed to set forth a *prima facie* case for obviousness of claims **18** and **61**.

Applicants therefore respectfully request that these §103(a) rejections of claims **18** and **61** be withdrawn.

**g) No Factual Inquiries Resolved**

Applicants respectfully note that the factual inquiries that must be resolved to establish a *prima facie* case of obviousness, as set forth in *Graham v. John Deere*, may be summarized as follows: (i) determine the scope and content of the prior art; (ii) ascertain the differences between the prior art and the claims at issue; (iii) resolve the level of ordinary skill in the pertinent art; (iv) and consider objective evidence (*e.g.*, secondary considerations).

Applicants further respectfully note that the Examiner has provided no evidence in support of a *prima facie* case for obviousness, nor has the Examiner resolved any of the factual determinations required by *Graham v. John Deere*. Within such an evidentiary vacuum, the Examiner's unsupported conclusory statement that it would have been obvious to combine Dubats, Matsumoto, and Abrams to achieve the claimed embodiments, is entirely meaningless.

At least for these reasons, the Examiner has entirely failed to establish a *prima facie* case for obviousness, and the §103(a) ground for rejection of claims **18** and **61** should therefore be withdrawn.

### **III. Conclusion**

At least for the foregoing reasons, it is submitted that all pending claims are now in condition for allowance, *or in better form for appeal*, and the Examiner's early re-examination and reconsideration are respectfully requested.

Alternatively, if there remain any questions regarding the present application, the Examiner is cordially requested to contact Carson C.K. Fincham at telephone number (203) 461-7017 or via e-mail at [cfincham@walkerdigital.com](mailto:cfincham@walkerdigital.com), upon the Examiner's convenience.

### **IV. Fees and Petition for Extension of Time to Respond**

While no fees are believed to be due at this time, please charge any fees that may be required for this Amendment to Deposit Account No. 50-0271. Furthermore, should an extension of time be required, please grant any extension of time which may be required to make this Amendment timely, and please charge any fee for such an extension to Deposit Account No. 50-0271.

Respectfully submitted,

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Date

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